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5 Attorneys for Defendants County of Sonoma (also sued as Sonoma County Sheriff's Department and
 6 Sonoma County District Attorney's Office), Stephan Passalacqua, J. Michael Mullins, Greg Jacobs,
 Christine M. Cook, Russel L. Davidson, James Patrick Casey, and Detective Beau M. Martin

8 UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 ZACHARIAH JUDSON RUTLEDGE,

11 NO. CV 07-04274 CW

12 Plaintiff,

12 [PROPOSED] ORDER GRANTING COUNTY
 13 DEFENDANTS' MOTION TO DISMISS
 13 SECOND AMENDED COMPLAINT
 14 [FRCP Rule 12(b)(6)]

14 COUNTY OF SONOMA, MICHAEL
 15 POTTS, et al.,

15 Date: April 10, 2008
 15 Time: 2:00 p.m.
 16 Ctrm: 2

16 Defendants.

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18 On April 10, 2008, this Court held the hearing on Defendants County of Sonoma (also sued as
 19 Sonoma County Sheriff's Department and Sonoma County District Attorney's Office), Stephan
 20 Passalacqua, J. Michael Mullins, Greg Jacobs, Christine M. Cook, Russel L. Davidson, James Patrick
 21 Casey, and Detective Beau M. Martin (collectively "County Defendants") motion to dismiss the second
 22 amended complaint of Plaintiff Zachariah Judson Rutledge pursuant to FRCP Rule 12(b)(6).

23 Based upon the evidence and argument presented at the hearing,

24 IT IS HEREBY ORDERED that County Defendants' Motion to Dismiss is GRANTED on each
 25 of the following grounds:

- 26 1. The Second Cause of Action for violation of the California Constitution, Article I, as
 27 stated under Cal. Civil Code §§51 and 52 fails to state facts sufficient to constitute a cause
 28 of action against the County defendants as a matter of law, as Civil Code §§51 and 52

1 (and the statutory remedies thereunder) do not provide for the relief sought.

- 2 2. The Third Cause of Action for intentional/negligent infliction of emotional distress,
3 insofar as it seeks redress pursuant to Civil Code §§51 and 52, fails to state a cause of
4 action as those statutes do not provide remedy for these common law tort claims.
- 5 3. The Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Twelfth, Thirteenth and Sixteenth
6 Causes of Action (for various stated constitutional violations) fail to state facts sufficient
7 to constitute separate causes of action against County defendants, as they are merely
8 restatements of the First Cause of Action which adequately alleges violations of the
9 constitutional rights provided under the First, Fourth, Fifth and Fourteenth Amendments.
- 10 4. The Tenth Cause of Action for defamation, slander and libel (defamation) fails to state
11 facts sufficient to constitute a cause of action against defendant Christine Cook, as the
12 plaintiff has failed to allege which, if any, of the statements alleged to have been made by
13 defendant Cook were “untrue” or false, and thus has failed to set forth the necessary
14 factual allegations to support a defamation claim.
- 15 5. As to the references in the Caption to “assault and battery” and to “excessive force”
16 within the complaint (at ¶54), defendants move to strike such references and/or to dismiss
17 any claim for excessive force and/or assault and battery, as the plaintiff has failed to allege
18 any facts which, if true, would constitute a cause of action against the defendants for
19 either claim.
- 20 6. As to defendant Beau Martin, the entire First Amended Complaint, which fails to state
21 facts sufficient to constitute any cause of action against him.

22 IT IS SO ORDERED.

23 DATED: _____

24 _____
25 Claudia Wilken
26 United States District Court Judge
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